

Comptroller of the Currency, Treasury

§ 32.3

(3) To make payment on account of any default by the account party in the performance of an obligation.

[60 FR 8532, Feb. 15, 1995, as amended at 63 FR 15746, Apr. 1, 1998; 66 FR 31120, June 11, 2001; 66 FR 55072, Nov. 1, 2001; 69 FR 51357, Aug. 19, 2004; 77 FR 37275, June 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 37277, June 21, 2012, § 32.2 was amended by removing newly redesignated paragraph (q)(1)(vii), removing the semicolon and the word “and” at the end of newly redesignated paragraph (q)(1)(vi) and adding in its place a period, and adding the word “and” at the end of newly redesignated paragraph (q)(1)(v), effective Jan. 1, 2013. At 77 FR 76841, Dec. 31, 2012, the effective date for this amendment was delayed to July 1, 2013.

§ 32.3 Lending limits.

(a) *Combined general limit.* A national bank's or savings association's total outstanding loans and extensions of credit to one borrower may not exceed 15 percent of the bank's or savings association's capital and surplus, plus an additional 10 percent of the bank's or savings association's capital and surplus, if the amount that exceeds the bank's or savings association's 15 percent general limit is fully secured by readily marketable collateral, as defined in § 32.2(v). To qualify for the additional 10 percent limit, the bank or savings association must perfect a security interest in the collateral under applicable law and the collateral must have a current market value at all times of at least 100 percent of the amount of the loan or extension of credit that exceeds the bank's or savings association's 15 percent general limit.

(b) *Loans subject to special lending limits.* The following loans or extensions of credit are subject to the lending limits set forth below. When loans and extensions of credit qualify for more than one special lending limit, the special limits are cumulative.

(1) *Loans secured by bills of lading or warehouse receipts covering readily marketable staples.* (i) A national bank's or savings association's loans or extensions of credit to one borrower secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples, as defined in § 32.2(w), may not exceed 35 percent of the bank's or sav-

ings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. The market value of the staples securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's or savings association's combined general limit.

(ii) Staples that qualify for this special limit must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance if such insurance is customary. Whether a staple is non-perishable must be determined on a case-by-case basis because of differences in handling and storing commodities.

(iii) This special limit applies to a loan or extension of credit arising from a single transaction or secured by the same staples, provided that the duration of the loan or extension of credit is:

(A) Not more than ten months if secured by nonperishable staples; or

(B) Not more than six months if secured by refrigerated or frozen staples.

(iv) The holder of the warehouse receipts, order bills of lading, documents qualifying as documents of title under the Uniform Commercial Code, or other similar documents, must have control and be able to obtain immediate possession of the staple so that the bank or savings association is able to sell the underlying staples and promptly transfer title and possession to a purchaser if default should occur on a loan secured by such documents. The existence of a brief notice period, or similar procedural requirements under applicable law, for the disposal of the collateral will not affect the eligibility of the instruments for this special limit.

(A) Field warehouse receipts are an acceptable form of collateral when issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the staples even though the grain elevator or warehouse is maintained on the premises of the owner of the staples.

(B) Warehouse receipts issued by the borrower-owner that is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by

state or Federal authorities, may be considered eligible collateral under this provision only when the receipts are registered with an independent registrar whose consent is required before the staples may be withdrawn from the warehouse.

(2) *Discount of installment consumer paper.* (i) A national bank's or savings association's loans and extensions of credit to one borrower that arise from the discount of negotiable or nonnegotiable installment consumer paper, as defined at § 32.2(f), that carries a full recourse endorsement or unconditional guarantee by the person selling the paper, may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. An unconditional guarantee may be in the form of a repurchase agreement or separate guarantee agreement. A condition reasonably within the power of the bank or savings association to perform, such as the repossession of collateral, will not make conditional an otherwise unconditional guarantee.

(ii) Where the seller of the paper offers only partial recourse to the bank or savings association, the lending limits of this section apply to the obligation of the seller to the bank or savings association, which is measured by the total amount of paper the seller may be obligated to repurchase or has guaranteed.

(iii) Where the bank or savings association is relying primarily upon the maker of the paper for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the seller of the paper, the lending limits of this section apply only to the maker. The bank or savings association must substantiate its reliance on the maker with—

(A) Records supporting the bank's or savings association's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the bank or savings association or by a third party that is contractually obligated to make those records available for examination purposes; and

(B) A written certification by an officer of the bank or savings association authorized by the bank's or savings association's board of directors or any designee of that officer, that the bank or savings association is relying primarily upon the maker to repay the loan or extension of credit.

(iv) Where paper is purchased in substantial quantities, the records, evaluation, and certification must be in a form appropriate for the class and quantity of paper involved. The bank or savings association may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.

(3) *Loans secured by documents covering livestock.* (i) A national bank's or savings association's loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or give a first lien on livestock may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. The market value of the livestock securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's or savings association's combined general limit. For purposes of this subsection, the term "livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry and fish, whether or not held for resale.

(ii) The bank or savings association must maintain in its files an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate, but in any case not more than 12 months old.

(iii) Under the laws of certain states, persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If a lien that is based on pasturage furnished by the lienor prior to the bank's or savings association's loan or extension of credit is assigned to the bank or savings association by a recordable instrument and protected against being defeated by some other

lien or claim, by payment to a person other than the bank or savings association, or otherwise, it will qualify under this exception provided the amount of the perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the portion of the loan or extension of credit that exceeds the bank's or savings association's combined general limit. When the amount due under the grazing contract is dependent upon future performance, the resulting lien does not meet the requirements of the exception.

(4) *Loans secured by dairy cattle.* A national bank's or savings association's loans and extensions of credit to one borrower that arise from the discount by dealers in dairy cattle of paper given in payment for the cattle may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. To qualify, the paper—

(i) Must carry the full recourse endorsement or unconditional guarantee of the seller; and

(ii) Must be secured by the cattle being sold, pursuant to liens that allow the bank or savings association to maintain a perfected security interest in the cattle under applicable law.

(5) *Additional advances to complete project financing pursuant to renewal of a qualifying commitment to lend.* A national bank or savings association may renew a qualifying commitment to lend, as defined by § 32.2(t), and complete funding under that commitment if all of the following criteria are met—

(i) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank or savings association;

(ii) The completion of funding will enable the borrower to complete the project for which the qualifying commitment to lend was made; and

(iii) The amount of the additional funding does not exceed the unfunded portion of the bank's or savings association's qualifying commitment to lend.

(c) *Loans not subject to the lending limits.* The following loans or extensions of

credit are not subject to the lending limits of 12 U.S.C. 84, or 12 U.S.C. 1464(u), as applicable, of this part.

(1) *Loans arising from the discount of commercial or business paper.* (i) Loans or extensions of credit arising from the discount of negotiable commercial or business paper that evidences an obligation to the person negotiating the paper. The paper—

(A) Must be given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or any other business purpose that may reasonably be expected to provide funds for payment of the paper; and

(B) Must bear the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions, that is transferred without recourse, or with limited recourse, must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper, such as insurance provided by the Export-Import Bank.

(ii) A failure to pay principal or interest on commercial or business paper when due does not result in a loan or extension of credit to the maker or endorser of the paper; however, the amount of such paper thereafter must be counted in determining whether additional loans or extensions of credit to the same borrower may be made within the limits of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part.

(2) *Bankers' acceptances.* A national bank's or savings association's acceptance of drafts eligible for rediscount under 12 U.S.C. 372 and 373 or 12 U.S.C. 1464(c)(1)(M), as applicable, or a national bank's or savings association's purchase of acceptances created by other banks or savings associations that are eligible for rediscount under those sections; but not including—

(i) A national bank's or savings association's acceptance of drafts ineligible for rediscount (which constitutes a loan by the bank or savings association to the customer for whom the acceptance was made, in the amount of the draft);

(ii) A national bank's or savings association's purchase of ineligible acceptances created by other banks or savings associations (which constitutes a

loan from the purchasing bank or savings association to the accepting bank or savings association, in the amount of the purchase price); and

(iii) A national bank's or savings association's purchase of its own acceptances (which constitutes a loan to the bank's or savings association's customer for whom the acceptance was made, in the amount of the purchase price).

(3)(i) *Loans secured by U.S. obligations.* Loans or extensions of credit, or portions thereof, to the extent fully secured by the current market value of:

(A) Bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by similar obligations fully guaranteed as to principal and interest by the United States;

(B) Loans to the extent guaranteed as to repayment of principal by the full faith and credit of the U.S. government, as set forth in paragraph (c)(4)(ii) of this section.

(ii) To qualify a loan or extension of credit under paragraph (c)(3)(i) of this section, the national bank or savings association must perfect a security interest in the collateral under applicable law.

(4) *Loans to or guaranteed by a Federal agency.* (i) Loans or extensions of credit to any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States.

(ii) Loans or extensions of credit, including portions thereof, to the extent secured by unconditional takeout commitments or guarantees of any of the foregoing governmental entities. The commitment or guarantee—

(A) Must be payable in cash or its equivalent within 60 days after demand for payment is made;

(B) Is considered unconditional if the protection afforded the national bank or savings association is not substantially diminished or impaired if loss should result from factors beyond the bank's or savings association's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a re-

quirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank or savings association.

(5) *Loans to or guaranteed by general obligations of a State or political subdivision.* (i) A loan or extension of credit to a State or political subdivision that constitutes a general obligation of the State or political subdivision, as defined in part 1 of this chapter, and for which the lending national bank or savings association has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the obligation in question, that the loan or extension of credit is a valid and enforceable general obligation of the borrower; and

(ii) A loan or extension of credit, including portions thereof, to the extent guaranteed or secured by a general obligation of a State or political subdivision and for which the lending bank or savings association has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the guarantee or collateral in question, that the guarantee or collateral is a valid and enforceable general obligation of that public body.

(6) *Loans secured by segregated deposit accounts.* Loans or extensions of credit, including portions thereof, to the extent secured by a segregated deposit account in the lending national bank or savings association, provided a security interest in the deposit has been perfected under applicable law.

(i) Where the deposit is eligible for withdrawal before the secured loan matures, the bank or savings association must establish internal procedures to prevent release of the security without the lending bank's or savings association's prior consent.

(ii) A deposit that is denominated and payable in a currency other than that of the loan or extension of credit that it secures may be eligible for this exception if the currency is freely convertible to U.S. dollars.

(A) This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit.

(B) The lending bank or savings association must establish procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

(7) *Loans to financial institutions with the approval of the appropriate Federal banking agency.* Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of a financial institution when an emergency situation exists and a national bank or savings association is asked to provide assistance to another financial institution, and the loan is approved by the appropriate Federal banking agency. For purposes of this paragraph, financial institution means a commercial bank, savings bank, trust company, savings association, or credit union.

(8) *Loans to the Student Loan Marketing Association.* Loans or extensions of credit to the Student Loan Marketing Association.

(9) *Loans to industrial development authorities.* A loan or extension of credit to an industrial development authority or similar public entity created to construct and lease a plant facility, including a health care facility, to an industrial occupant will be deemed a loan to the lessee, provided that—

(i) The national bank or savings association evaluates the creditworthiness of the industrial occupant before the loan is extended to the authority;

(ii) The authority's liability on the loan is limited solely to whatever interest it has in the particular facility;

(iii) The authority's interest is assigned to the bank or savings association as security for the loan or the industrial occupant issues a promissory note to the bank or savings association that provides a higher order of security than the assignment of a lease; and

(iv) The industrial occupant's lease rentals are assigned and paid directly to the bank or savings association.

(10) *Loans to leasing companies.* A loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease will be deemed a loan to the lessee, provided that—

(i) The national bank or savings association evaluates the creditworthiness of the lessee before the loan is extended to the leasing corporation;

(ii) The loan is without recourse to the leasing corporation;

(iii) The bank or savings association is given a security interest in the equipment and in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;

(iv) The leasing corporation assigns all of its rights under the lease to the bank or savings association;

(v) The lessee's lease payments are assigned and paid to the bank or savings association; and

(vi) The lease terms are subject to the same limitations that would apply to a national bank or savings association acting as a lessor.

(11) *Credit Exposures arising from transactions financing certain government securities.* Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in 12 CFR 1.2(j), in the case of national banks, or securities listed in section 5(c)(1)(C), (D), (E), and (F) of HOLA and general obligations of a state or subdivision as listed in section 5(c)(1)(H) of HOLA, 12 U.S.C. 1464(c)(1)(C), (D), (E), (F), and (H), in the case of savings associations.

(12) *Intraday credit exposures.* Intraday credit exposures arising from a derivative transaction or securities financing transaction.

(d) *Special lending limits for savings associations—(1) \$500,000 exception for savings associations.* If a savings association's aggregate lending limitation calculated under paragraph (a) of this section is less than \$500,000, notwithstanding this limitation in paragraph (a) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed \$500,000.

(2) *Loans by savings associations to develop domestic residential housing units.*

(i) Subject to paragraph (d)(2)(ii) of this section, a savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of \$30,000,000 or 30

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percent of the savings association's unimpaired capital and unimpaired surplus, including all loans and extensions of credit subject to paragraph (a) of this section, *provided that*:

(A) The savings association is, and continues to be, in compliance with its capital requirements under part 167 of this chapter.

(B) The appropriate Federal banking agency permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(2)(i). A savings association that meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section and that meets the requirements for "expedited treatment" under 12 CFR 116.5 or 12 CFR 390.101 may use the higher limit set forth under paragraph (d)(2)(i) if the savings association has filed a notice with the appropriate Federal banking agency that it intends to use the higher limit at least 30 days prior to the proposed use. A savings association that meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section and that meets the requirements for "standard treatment" under 12 CFR 116.5 or 12 CFR 390.101 may use the higher limit set forth under this paragraph (d)(2)(i) if the savings association has filed an application with the appropriate Federal banking agency and the agency has approved the use the higher limit;

(C) The loans and extensions of credit made under this paragraph (d)(2)(i) of this section to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus;

(D) The loans and extensions of credit made under paragraph (d)(2)(i) of this section comply with the applicable loan-to-value requirements.

(ii) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(2)(i) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(2)(i) of this section or any condition(s) set forth in an order issued by the appropriate Federal banking agency under paragraph (d)(2)(i)(B) of this section.

(iii) As used in this section, the term "*to develop*" includes each of the various phases necessary to produce housing units as an end product, such as acquisition, development and construction; development and construction; construction; rehabilitation; and conversion; and the term "*domestic*" includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

(3) *Commercial paper and corporate debt securities*. In addition to the amount allowed under the savings association's combined general limit, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by commercial paper or corporate debt securities that are, as of the date of purchase, investment grade.

[60 FR 8532, Feb. 15, 1995, as amended at 63 FR 15746, Apr. 1, 1998; 66 FR 31120, June 11, 2001; 66 FR 35072, Nov. 1, 2001; 77 FR 37277, June 21, 2012]

§ 32.4 Calculation of lending limits.

(a) *Calculation date*. For purposes of determining compliance with 12 U.S.C. 84, and 12 U.S.C. 1464(u), as applicable, and this part, a national bank or savings association shall determine its lending limit as of the most recent of the following dates:

(1) The last day of the preceding calendar quarter; or

(2) The date on which there is a change in the bank's or savings association's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3 or 12 CFR 165.3, as applicable.

(b) *Effective date*. (1) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(1) of this section will be effective as of the earlier of the following dates:

(i) The date on which the bank's or savings association's Call Report is submitted; or

(ii) The date on which the bank's or savings association's Call Report is required to be submitted.

(2) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(2) of this